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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

LEWIS, RALPH A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/748,869
Filing Date: December 30, 2003
Appellant(s): HURSON, STEVE

Nathan S. Smith
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 15, 2008 appealing from the Office action mailed 7/27/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1, 3-11 and 18-35. A new claim, dependent claim 36, was filed in the response of 5/14/2007. The Final Office Action of 7/27/2007 inadvertently failed to address claim 36 and appellant's brief of 9/15/2008 does not list the status of the claim, refer to it under the grounds of rejection or list it in the claim appendix. No amendment has been submitted cancelling the claim. Claim 36 requires an anti-rotation chamber and a threaded portion with the claimed notch being formed between the anti-rotation chamber and the threaded portion. This arrangement is not taught or fairly suggested to one having ordinary skill in the art and consequently is objected to as being allowable if rewritten in independent form to include all of the limitations of the claim from which it depends. Claim 36 is set forth in the attached claim appendix.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Dependent claim 35 was rejected in the Final of 7/27/2007 under 35 U.S.C. 103(a) as being unpatentable over Fradera (U.S. 4,790,753), Kumar et al (U.S. 6,951,462), Marlin (US 5,135,395), and Meiers et al (U.S. 5,688,123) along with claims 18-27 and is treated as being included in section "D" of Appellant's "VI. Grounds of Rejection to be Reviewed on Appeal."

.Additionally, it is noted that the 35 U.S.C. 112, second paragraph rejection of claims 4-6 and 8-11 made in the Final of 7/27/2007 and referred to in the Argument section (VII) of appellant's brief has been withdrawn in view of applicant's 8/4/2008 amendment (note Advisory of 8/25/2008).

(7) Claims Appendix

A substantially correct copy of appealed claims 1, 3-11 and 18-35 appears on pages 16-19 of the Appendix to the appellant's brief. The minor errors are as follows:

In claim 4, line 2, the term "further" was deleted (8/4/2008 amendment).

In claim 28, line 6, the term "a" was deleted and replaced with "the" (4/15/2008 amendment).

The attached Claims Appendix includes the above corrections to claims 4 and 28, as well as, objected to claim 36.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Hurson	U.S. Patent 6,769,913	August 3, 2004
Fradera	U.S. Patent 4,790,753	December 13, 1988
Kumar et al	U.S. Patent 6,951,462	October 4, 2005
Hurson	PCT WO 01/85050	November 15, 2001
Marlin	U.S. Patent 5,135,395	August 4, 1992
Meiers et al	U.S. Patent 5,688,123	November 18, 1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 6-11, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fradera (US 4,790,753) in view of Kumar et al (US 6,951,462).

Fradera discloses a dental implant 1 having an integrally formed body portion 10 and abutment portion 13, 14. The abutment portion includes a flared portion 13, shoulder portion 24, and final restoration portion 14. The Fradera implant further includes a cap 25 with internal cavity for fitting over final restoration portion 14 of the implant. The implant further includes a threaded bore 16 that receives screw 26 for fastening cap 25 to the implant 1. The bore 16 lacks the distinctly claimed notch which receives the specifically claimed mating component having lever arms or prongs configured to engage the notch.

Fradera fails to disclose how the implant 1 is maneuvered to the implant site in the patient's mouth and installed. Kumar et al, however, for a similar dental implant teach that it is desirable to provide the threaded internal bore 62 with an engaging notch 66 which engages the prong 32 of an insertion tool 10 (note Figure 5) so that the implant can be easily handled and maneuvered into position. To have modified the Fradera implant to have a notch as taught by Kumar et al to receive an insertion tool ("mating component") as taught by Kumar et al so that the implant can be easily positioned would have been obvious to one of ordinary skill in the art.

In regard to claims 8, 9 and 11, the Fradera implant further includes a cap 25 with internal cavity for fitting over final restoration portion 14 of the implant. Fradera does not appear to disclose the color of cap 25 as required by claims 8 and 9; however, one of ordinary skill in the art would have found it readily obvious to make the cap of

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natural white tooth color for cosmetic reasons. In regard to claim 11, a horizontal cross-section at element 15 of the abutment is non round as is a vertical cross-section of the cap 25. Alternatively, to have made the cap of an oval or more tooth shape for cosmetic reasons would also have been obvious to the ordinarily skilled artisan.

In regard to claim 28, note that healing cap 25 of Fradera is disclosed as being removed at column 5, lines 8-14.

Claims 4, 5, 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fradera (US 4,790,753) and Kumar et al (US 6,951,462) as applied above and in further view of Hurson (WO 01/85050).

In regard to claim 4, Hurson '050 teaches that it is desirable to extend the flange 86 of the cap 76 over the shoulder 47 of the abutment 38 in order to prevent gum tissue growth from near and above the shoulder region (note page 8, lines 4-7 and page 9, lines 22-33). To have extended the end flange of the Fradera cap 25 over the shoulder 24 in order to prevent the unwanted gum tissue growth as taught by Hurson would have been obvious to one of ordinary skill in the art. In regard to claims 8 and 9, Hurson teaches making the cap of a tooth color (page 7, lines 30 and 31); to have made the Fradera cap 25 white for cosmetic reasons as taught by Hurson would have been obvious to one of ordinary skill in the art. In regard to claim 11, Hurson teaches making the cap non-round to resemble the shape of a natural tooth (note page 8, lines 13-15). To have made the Fradera cap non-round in the shape of a natural tooth as taught by Hurson would have been obvious to one of ordinary skill in the art.

It is noted that appellant does contest the applied teachings of Hurson. Accordingly, the present rejection stands or falls with the 103 rejection of claim 1 above based on Fradera and Kumar et al.

Claims 18-27 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fradera (US 4,790,753) and Kumar et al (US 6,951,462) as applied above and in further view of Marlin (US 5,135,395) and Meiers et al (US 5,688,123).

Fradera fails to disclose a procedure for manufacturing a prosthesis for the implant disclosed. Marlin teaches the conventional prior art manufacture of a prosthesis with a plastic coping that precisely fits over the abutment, encasing it in stone and then burning out the coupling leaving an opening in which the prosthesis is cast (note particularly column 2, lines 25-35) . To have provided a coping that precisely fits the Fradera abutment (e.g. one shaped like Meiers et al with "standoff" 5) and then using the coping to construct a prosthesis in a prior art investment cast technique as that disclosed by Marlin would have been obvious to one of ordinary skill in the art desiring to construct a prosthesis for the Fradera implant.

It is noted that appellant does not contest the applied teachings of Marlin and Meiers. Accordingly, the present rejection stands or falls with the 103 rejection of claims 1 and 28 above based on Fradera and Kumar et al.

Claims 30-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No.

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6,769,913 in view of Fradera (US 4,790,753) in view of Kumar et al (US 6,951,462).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims of '913 teach the use of an impression cap with injection port and vent holes and the use of a syringe to inject impression material into the cap through the injection port. Merely, providing for a '913 patented cap/method for use with the prior art Fradera implant with prior art insertion means as taught by Kumar et al so that impressions may be made more accurately would have been obvious to one of ordinary skill in the art.

It is noted that appellant does not contest the applied teachings of 6,769,913. Accordingly, the present rejection stands or falls with the 103 rejection of claim 28 above based on Fradera and Kumar et al.

(10) Response to Argument

The sole issue raised by Appellant in the appeal is whether the spring loaded locking member 32 of Kumar et al which is preferably formed as a "ball" but could be formed as a "pin, button, cylinder or the like" (column 3, lines 21-26) reasonably meets appellant's "one or more lever arms or prongs on a mating component" limitation. Appellant argues that the Kumar et al locking member 32 is slidable within the axial bore and that Kumar et al fails to disclose "any alternative mechanisms or modes of movement such as a pivotal, rotational, or otherwise" (brief, page 12). The examiner is of the position that the spring loaded locking member 32 reasonably meets the "prong" limitation of the present claims.

Appellant's written description only briefly mentions the mating component with "one or more lever arms or prongs" at paragraph [0052], provides no illustration of the mating component lever arms or prongs and provides for no special definition of the "prong" terminology. Consequently the examiner relies on the term's common meaning as referring to a projection. This examiner is of the position that the locking member 32 which projects from the surface of insertion tool 10 to engage notch 66 reasonably meets the common definition of "prong", particularly when formed as a "pin" or "cylinder" as taught by Kumar et al (column 3, lines 21-26). The examiner finds no requirement in the claims that the "prong" have a "pivotal, rotational or otherwise" movement. Appellant's argument is much narrower than the claim language requires.

Appellant further argues that the locking member 32 of Kumar et al requires three parts - a movable locking member 32, a biasing member 34 and a stop 42 and "teaches against a single 'lever arm or prong' that does not use a slidable motion" (brief page 13). The examiner notes that the present claims use the open term "comprising" which is interpreted as covering devices that have elements in addition to those explicitly required by the claims (including those devices with a spring and a stop). The examiner further notes that the claims have no requirement regarding the type of movement of the claimed prong. Again, applicant's arguments are narrower than what is reasonably required of the claims.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ralph A. Lewis/
Primary Examiner, Art Unit 3732

Conferees:

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

/Thomas Barrett/
TQAS TC3700